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HONG LEONG BANK BHD

v.

LEE KHAI SIN

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HIGH COURT SABAH & SARAWAK, KUCHING
HAMID SULTAN ABU BACKER JC
[ORIGINATING SUMMONS NO: 24-212-2004-II]
25 APRIL 2007

C ***CIVIL PROCEDURE:*** *Costs - Getting-up fee - Summons to review taxation by judge - Application for - Discretion of court - Whether to be exercised judicially and on established principles - Whether deputy registrar erred in deciding quantum - Whether registrar's justification for award erroneous - Rules of the High Court 1980, O. 59 r. 36(1)*

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The defendant applied for a 'summons to review taxation by judge' (encl. 86) pursuant to O. 59 r. 36(1) of the Rules of the High Court (RHC) 1980, to review the decision of the deputy registrar. The plaintiff herein was a chargee who had applied for order for sale pursuant to s. 148(2)(c) of the Sarawak Land Code (SLC) to foreclose the defendant's property to satisfy the outstanding sum of RM411,772.46. However, the court found that the statutory notice under s. 148(3) of SLC given by the plaintiff failed to comply with the term of the said charge and ruled that the statutory notice was null and void for non-compliance of a clause in the said charge. In consequence, the court held that it was not just to grant the order for sale and dismissed it with costs with an order that the costs be taxed and paid to the defendant. The defendant thereafter filed his application for taxation before the registrar seeking a getting up fees of RM40,000. The deputy registrar granted a sum of RM5,000 for getting up fees. Being dissatisfied with the decision the defendant filed a request to review taxation pursuant to O. 59 r. 34 of the Rules of the High Court 1980 on *inter alia,* the ground that the getting up fee of only RM5000 allowed was manifestly low and was not made based on established principles. In opposing the review, the plaintiff submitted that the deputy registrar had correctly applied his discretion by awarding the amount of RM5,000 for the getting up fee and that the sum was more than adequate and reasonable.

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Held (sustaining order of deputy registrar and dismissing defendant's application for review):

(1) The object of awarding costs to the litigant is to indemnify him for the expenses he had incurred in successfully establishing his legal rights. Order 59 of the Rules of the High Court 1980 provides that costs of incidental proceedings in an action shall be in the discretion of the court. The court shall have full power to determine by whom and to what extent the costs are to be paid. The discretion of the court is very wide, but has to be exercised judicially and on established principles. (para 8)

(2) The applicant had only succeeded on a procedural point and in ordinary circumstances the getting up fees should have been less than RM2,000 as there was no finality and the plaintiff could refile the charge action. The deputy registrar herein had been very generous with the award of RM5,000 for the getting up fees. The deputy registrar in deciding the quantum had not erred on questions of principles or had failed to take into account some relevant consideration. (para 9)

(3) This court further disagreed with the defendant's contention that the deputy registrar ought not have ordered RM500 costs for review by the registrar. The application for taxation or review is an incidental proceedings in an action and the registrar had sufficient powers under O. 59 to award costs of review as he deemed fit. On a similar note, this court took the view that for this 'summons to review taxation by the judge' the court may order costs. Thus, the defendant/applicant must pay the sum of RM3,000 to the plaintiff/respondent as costs for this review made under O. 59 r. 36(1) Rules of the High Court 1980. (paras 11 & 12)

Case(s) referred to:

Alliance Bank Malaysia Bhd v. Chang Joo Pin (Originating Summons No: 24-239-2003 (MR) (Unreported) ***(refd)***

Chan Kok Choon JP v. MBF Finance Bhd [2000] 4 CLJ 453 CA ***(refd)***

Chen Teti v. Ornaresort Bhd [2003] 3 CLJ 91 HC ***(refd)***

Co-operative Central Bank Ltd v. Tan Nyap How [1997] 1 LNS 414 HC ***(refd)***

Gooi Hock Seng v. Chuah Guat Khim, Pemegang Harta Pesaka Bagi Eset Chuah Teow Hock, Simati [2001] 1 CLJ 583 SC ***(refd)***

A *Hong Leong Bank Berhad v. Lee Khai Sin [2005] 6 CLJ 471 HC* ***(refd)***
Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors [2002] 4 CLJ 259 FC ***(refd)***
Perwira Affin Bank Bhd v. KI Production Sdn Bhd [2000] 4 CLJ 482 HC ***(refd)***
B *Petroliam Nasional Bhd (Petronas) & Anor v. Cheah Kam Chiew [1986] 1 LNS 81 SC* ***(refd)***
Southern Finance Co Bhd v. Zamrud Properties Sdn Bhd (No 3) [1999] 4 CLJ 754 HC ***(refd)***
Tan Ah Chim & Sons Sdn Bhd v. Ooi Bee Tat & Anor [1993] 4 CLJ 476 HC ***(refd)***
C *Tan Boon Bak Trading Sdn Bhd v. Chua Choong Yin [2004] 3 CLJ 695 CA* ***(refd)***
Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1995] l CLJ 15 FC ***(refd)***
Teo Ah Khing v. Yii Chee Ming [2006] 2 CLJ 188 HC ***(refd)***
D *United Malayan Banking Corp Bhd v. Sykt Perumahan Luas Sdn Bhd [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163 HC* ***(dist)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)(c)
Rules of the High Court 1980, O. 59 rr. 3(2), 34, 36(1), O. 83
E Sarawak Land Code, s. 148(2)(c), (3)

For the plaintiff - Alicia Voon; M/s Alvin Chong & Partners
For the defendant - Kenny Yi; M/s Yi & Co

Reported by Suhainah Wahiduddin

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JUDGMENT

Hamid Sultan Abu Backer JC:

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[1] This is my judgment in respect of the defendant's "summons to review taxation by judge" (encl. 86) pursuant to O. 59 r. 36(1) of Rules of the High Court (RHC) 1980, to review the decision of the learned deputy registrar.

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[2] The plaintiff in this case is a chargee who applied for order for sale pursuant to s. 148(2)(c) of the Sarawak Land Code (SLC) to foreclose the defendant's property to satisfy the outstanding sum of RM411,772.46 as at 25 April 2004. The defendant opposed the foreclosure proceedings on various
I grounds. However, the court found that the statutory notice under s. 148(3) of SLC given by the plaintiff failed to comply with

the term of the said charge and ruled that the statutory notice was null and void for non-compliance of a clause in the said charge. In consequence, the court held that it was not just to grant the order for sale and dismissed it with costs with an order that the costs to be taxed and paid to the defendant.

[3] The defendant thereafter filed his application for taxation before the registrar seeking a getting up fees of RM40,000. The learned deputy registrar granted a sum of RM5,000 for getting up fees. Being dissatisfied with the decision the defendant filed a request to review taxation pursuant to O. 59 r. 34 of the RHC 1980 on the following grounds:

(a) the getting up fee of only RM5,000 allowed is manifestly low and inadequate and is not made and/or based on established principles nor does it reflect the amount of work and skill required for the following reasons:

(i) the getting up allowed has totally ignored the fact that it concerned an originating summons wherein the plaintiff is applying for an order for sale in respect of an immovable property.

(ii) the hearing of the originating summons before the judge took considerable amount of work and time.

(iii) that the subject matter herein being an immovable property has its own special value.

(iv) that the learned taxing registrar has erred in law and in fact in failing to consider and/or to adopt the unreported case of Miri High Court Originating Summons No. 24-239-2003-(MR) wherein the learned High Court Judge allowed the getting up fee of RM10,000 to the defendant for striking out of the plaintiff's originating summons therein.

[4] In opposing the review before the learned registrar the plaintiff answers were as follows:

(a) the learned deputy registrar has correctly applied his discretion by awarding the amount of RM5,000 for the getting up fee.

A (b) the sum is more than adequate and is a reasonable amount for the amount of work done and skill required having considered the established principles and law and to the circumstances of the case.

B **[5]** The learned deputy registrar in his judgment had given a detailed considerations of the defendant as well as the plaintiff's submission and stated, *inter alia*, as follows:

(a) though the value of the subject matter in the action was RM411,772.46, that does not mean that the defendant is C entitled to a higher rate of getting-up after considering the nature of the action and/or the proceedings before the court.

(b) the action before the High Court was a foreclosure/charge action pursuant to O. 83 RHC 1980 and s. 148(2) SLC and D the law on that point is settled and nothing novel and complicated about that.

(c) the defendant's submission that the getting-up in a foreclosure proceedings should be at least RM10,000 is not correct. This E seems to be putting a standard amount that should be awarded and in awarding a getting-up, when that it should be considered on a case to case basis.

(d) the case of *Southern Finance Co. Bhd v. Zamrud Properties Sdn Bhd (No. 3)* [1999] 4 CLJ 754 as quoted by the defendant, F may not be relevant to this case as in the said case the court ruled that the issues that the court need to determine in the said case does not confine merely to 2 issues only. Further in the said case, it involves 34 properties and the total sum claimed by the plaintiff was in the region of RM10 million and G unlike this case, it involves one piece of land.

(e) *United Malayan Banking Corp Bhd v. Sykt Perumahan Luas Sdn Bhd* [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163 relied by the applicant can be distinguished with this case. In this case, the H issue is on getting-up fees only. Further, the facts of the said case is totally not the same in nature to this case. That case, is a case which dealt with setting aside of an order for sale by the chargor. In *Chen Teti v. Ornaresort Bhd* [2003] 3 CLJ 91, Low Hop Bing J said:

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The taxation of costs in respect of an application etc. which is not of the same type of application being considered by the learned registrar are not helpful to the defendant in determining the quantum for getting-up.

(f) the case of Miri High Court OS No. 24-239-2003 (MR) was not deliberated here with the facts and why the action was struck out. Whether the nature and the facts in the proceedings in Miri High Court is the same or otherwise remains a mystery and therefore without clear and proper facts produced before this court, the award for getting up fees should be on a case to case basis.

(g) the order made for getting up fees of RM5,000 is sustained and the defendant's request to review taxation is dismissed with an order that the defendant to pay costs in the sum of RM500 to the plaintiff.

[6] In respect of this review the defendant submits as follows:

(a) the learned taxing registrar upon application for review by the defendant maintained the getting up fee at RM5,000 and further awarded costs of RM500 to the plaintiff for the dismissal of the defendant's application for review.

(b) the defendant applied to review the getting up fees of RM5,000 on the ground that it was manifestly low and/or that it was not based on established principles nor does it reflect the amount of work and skill required by the defendant's counsel to oppose to the plaintiff's originating summons.

(c) the total sum claimed by the plaintiff in this action was RM411,772.46 as at 25 April 2004 together with interest at the rate of 8% per annum on monthly rest inclusive additional interest of 1% per annum, continues to be chargeable in respect of the outstanding sum of term loan facility from 26 April 2004 until the date of full settlement.

(d) it cannot be disputed that efforts and time had been spent for reading the memorandum of charge (which is made up of 27 pages), the facilities agreement of 59 pages and letters of demand and statutory notice to ascertain of the plaintiff's cause of action against the defendant.

(e) the defendant's counsel also had researched on this area of law to enhance the chances of success of the defendant as the subject matter of this originating summons in an immovable property, which has its own special value which could not be compensated by any award of costs or damages and in support relies on the following authorities

(i) *Perwira Affin Bank Bhd v. KI Production Sdn. Bhd.* [2000] 4 CLJ 482;

(ii) *Tan Ah Chim & Sons Sdn. Bhd. v. Ooi Bee Tat & Anor* [1993] 4 CLJ 476; and

(iii) *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn. Bhd.* [1995] 1 CLJ 15.

(iv) in *Southern Finance Co Bhd v. Zamrud Properties Sdn. Bhd. (No. 3)* [1999] 4 CLJ 754, the learned RK Nathan J allowed RM30,000 as the getting up fees to the defendant for their application to set aside an order for sale.

(v) in *United Malayan Banking Corp Bhd. v. Sykt Perumahan Luas Sdn. Bhd.* [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163, the High Court awarded getting up fees of RM65,658.45 to the defendant for an application to set aside an order for sale.

(vi) In Miri High Court Originating summons No. 24-239-2003 (MR) of *Alliance Bank Malaysia Berhad v. Chang Joo Pin @ Chong Voon Bin (unreported)*, the learned High Court Judge, Dato' Abdul Aziz bin Abdul Rahim reviewed and allowed the getting up fees of RM10,000 to the defendant for the withdrawal of the originating summons by the plaintiff as the defendant was wrongly sued by the plaintiff.

(f) in view thereof, it is undisputed that ample time was involved and vast work had been done by the defendant's counsel in preparing to oppose to the plaintiff's originating summons for an order for sale.

(g) the success of the defendant's advocates in causing the originating summons to be struck out with costs to be taxed unless otherwise agreed clearly prove that the defendant's advocates had conducted much work and time in putting a

strong defence to oppose the plaintiff's originating summons and the grounds of judgment was also published in [2005] 6 CLJ 471.

(h) the getting up fees of RM5,000 as awarded by the learned taxing master is on the lower side and/or has failed to reflect the amount of work and time that had been expended by the defendant's advocates in preparation to oppose to the plaintiff's originating summons. Further, in this application for review on the getting up fees, the defendant is also applying to set aside the order of costs of RM500 that was awarded by the learned taxing master to the plaintiff for the dismissal of the defendant's application for review before the learned taxing master.

(i) the award of RM500 to the plaintiff was not determined nor awarded by the learned taxing registrar upon the merits of the review. There was never any hearings or submissions being presented before the learned taxing registrar on the award of RM500.

(j) it was an unilateral award being made by the learned taxing registrar with no regards to the merits and the facts of the case. Further, at all times, the defendant never stated their consent for quantum of the said costs of RM500.

(k) if the learned taxing registrar felt obliged to award costs to the plaintiff for the said review, it would be more proper for the learned taxing registrar to order the costs to be taxed unless otherwise agreed.

(l) the award of costs of RM500 therefore ought to be forthwith set aside by the court.

[7] In opposing the review the plaintiff submits as follows:

(a) the defendant's request to judge to review taxation herein is only in respect of the quantum of costs awarded. The defendant's complaint is essentially that the getting up of RM5,000 granted to him is inadequate and should be increased.

(b) the law surrounding this area is well settled. It has been expounded in numerous authorities that the court will not interfere with the decision of the taxing registrar upon a mere question of quantum unless it can clearly be shown the registrar had made an obvious error or acted on mistaken principles in exercising his discretion. This principle was reiterated in *Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors* [2002] 4 CLJ 259 (FC)

(c) since the review was only as regards the quantum of costs for getting up, it should not be changed unless there was an error of principle on the part of the taxing registrar in fixing the amount.

(d) in *Tan Boon Bak Trading Sdn Bhd. v. Chua Choong Yin* [2004] 3 CLJ 695 (CA), it was stated that a court of review, be it the High Court or the Court of Appeal, will be slow to interfere with the quantum awarded for getting up in a bill of costs.

(e) in *Chan Kok Choon JP v. MBF Finance Bhd* [2000] 4 CLJ 453 (CA), it was stated that for the learned judge to interfere, there must be some error of principles or some other material error. In *Teo Ah Khing v. Yii Chee Ming* [2006] 2 CLJ 188, His Lordship Clement Skinner J in dealing with an application to review the learned deputy registrar's decision on the quantum of getting up costs awarded, held that the law on the matter at hand is fairly well settled; it is that the quantum awarded by the taxing registrar should not be changed unless there was an error of principle on the part of the registrar in fixing the amount.

(f) in relation to the defendant's first ground of objection (ie, the court ignored the fact that it concerned an originating summons for an order for sale in respect of an immovable property). The learned deputy registrar had given due consideration to this point. The learned deputy registrar referred to the relevant parts in his written grounds where it clearly showed he was well aware the matter was an originating summons for an order for sale in respect of an immovable property. This factor was taken into account when he fixed the amount, for getting up.

(g) with regards to the defendant's second ground of objection (ie, the hearing of the originating summons took considerable amount of works and time), the learned deputy registrar had also taken this factor into account in awarding the getting up fee. A perusal of the learned deputy registrar's ruling says that:

> I also did not deny that certain amount of times, works and efforts have been allocated by the learned counsel for the Defendant. However, I ruled that the amount of work should commensurate with the advocate's work of which I wholly disagreed to allow RM40,000 as the amount of getting-up is it is manifestly high and not reasonable to the nature of the issue.

(h) in relation to the defendant's third ground of objection (ie, that the subject matter being an immovable property has its own special value), this factor too had been taken into account by the learned deputy registrar when exercising his discretion. Again, a perusal of the learned deputy registrar's ruling clearly reveals that he had considered and was well aware of the value of the subject matter and says:

> Though the value of the subject matter in the action was RM411,772.46, that does not mean the Defendant is entitled to a higher rate of getting up after considering the nature of the action and/or the proceedings before the Court. ...
>
> Therefore, with respect, I decline to agree to Mr. Yi's submission that the getting up in a foreclosure proceedings should be at least RM10,000. This seems to be putting a standard amount that should be awarded and in awarding a getting-up, I am of the view that it should be considered on a case to case basis.

(i) with respect to the defendant's last ground of objection (ie, that the learned taxing registrar erred in law and in fact in failing to consider and/or adopt the unreported Miri High Court's decision the learned registrar in his ruling says:

> ... I do not see how I have failed to consider and/or adopt the case of Miri High Court OS No. 24-239-2003(MR) since this Court was not shown with the facts of the said case and why the action was struck out. Though it was

A submitted by Mr. Yi, His Lordship had reviewed and allowed a getting up of RM10,000, with respect I do not have the opportunity to have the grounds of decision and the reasons how His Lordship arrived to that decision.

B Whether the nature and the facts in the proceedings in Miri High Court is the same or otherwise remains a mystery to us and therefore I am of the view that without clear and proper facts produced before this Court, in ordering the getting up it should depend on a case to case basis.

C (j) the learned deputy registrar has not erred in principle in exercising his discretion in awarding the getting up. The reasoning of the learned deputy registrar in dealing with each of the grounds relied on by the defendant clearly show that there was no error in principle.

D (k) the learned deputy registrar had the powers and discretion to grant costs to the plaintiff. The said sum of RM500 was granted to the plaintiff as costs for the defendant bringing the review. As such, the amount is not part of the getting up fee awarded to the defendant. Applying the relevant guidelines and E principles laid down by the authorities above, the decision of the taxing registrar should not be changed unless there is an error in principle. The learned deputy registrar had the power to order the defendant to pay costs. In doing so, the order was made well within the ambit of his powers and discretion F and the learned deputy registrar cannot be said to have acted on 'mistaken principles/law'.

(l) the defendant's summons to review taxation by judge must be dismissed with costs and that the decision of the learned G deputy registrar in awarding RM5,000 as getting up fee and costs of the review of RM500 to the plaintiff, be herein maintained.

[8] I have considered both the plaintiff's and defendant's H submission in detail. To decide this review on quantum the test is that it falls on the defendant/applicant to satisfy the court that the learned deputy registrar had erred on a question of principles or had failed to take into account some relevant consideration. The principles in this area of law is well settled. The principles relevant I to this review may be summarised as follows:

(a) The object of awarding costs to the litigant is to indemnify him for the expenses he had incurred in successfully establishing his legal rights. Order 59 of the RHC 1980 provides that costs of incidental proceedings in an action shall be in the discretion of the court. The court shall have full power to determine by whom and to what extent the costs are to be paid. The discretion of the court is very wide, but it has to be exercised judicially and on established principles.

(b) Because costs is in the discretion of the court there has been a rule of practice of the House of Lord as stated by Viscount Cave LC in *Donald Campbell & Co. Ltd. v. Pollak*, that no appeal would lie for costs only, but the House will however entertain an appeal as to costs, where it is alleged that the order is founded upon an error of law.

(c) An appellate court does not interfere in the question of costs without reluctance. This is because the court below has an absolute discretion except that the discretion must be exercised judicially. An appellate court should only interfere unless it can be shown that there has been an error of law or the purported exercise of discretion was based on grounds wholly unconnected with the cause of action. The White Book says at p. 938:

> On an appeal as to costs where the costs are in the discretion of the Judge the C.A. will assume that he exercised his discretion unless satisfied that he did not do so (*Re Rotch* [1909] 54 SJ 30).
>
> A *fortiori* it will not interfere where he assigns reasons therefore which are perfectly germane and not based on any false principle (*Lever Bros v. Masboro' Equitable, etc., Society* [1912] 28 TLR 294); nor where there are also other possible grounds for his discretion (*Societe des Hotels Raunis v. Hawker* [1914] 30 TLR 423, CA).

(d) Wee Chong Jin CJ in *K. E. Hilborne v. Tan Tiang Quee* said:

> It has long been well settled that costs are in the discretion of the court. It has also long been well settled that an appellate tribunal is not entitled to interfere with a discretion exercised by a lower court unless it is clearly shown that the discretion has been exercised on wrong principles. It has also long been well settled

A that in the exercise of its discretion a court may, if in its opinion there are grounds for it to do so, refuse to award costs to a party who establishes that he has a good cause of action.

(e) In *Petroliam Nasional Bhd (Petronas) & Anor v. Cheah Kam Chiew* [1986] 1 LNS 81, the Supreme Court stated that an
B appellate court will be reluctant to interfere with the judge's order on costs. This was because both s. 68(1)(c) of the Courts of Judicature Act 1964 and O. 59 r. 3(2) of the RHC 1980 had put it beyond doubt that questions relating to costs
C were matters entirely within the discretion of the court.

An appellate court will only interfere if there has been an error of law; or if the purported exercise of discretion was based on grounds wholly unconnected with the cause of action.

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(f) In *Co-operative Central Bank Ltd v. Tan Nyap How* [1997] 1 LNS 414, the court considered the provision of O. 59 of RHC 1980. Augustine Paul JC (as he then was) made the following observations:

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> In taxation review proceedings, the court would have no jurisdiction to interfere with the discretion of the registrar on the issue of quantum unless it could be demonstrated that he had erred on a question of principle or had failed to take into account some relevant consideration. (b) Before
> F discretion could be exercised, sufficient materials must be placed before the decision-maker to enable him to exercise the discretion. (c) The note to item 26 Pt IV App 1 and para 1(2) Pt X App 1 of O. 59 of the RHC provided the basis for making the discretionary award under item 26. (d)
> G They identified the materials which must be considered by the registrar in exercising his discretion. (e) The registrar would be able to consider the materials only if they were placed before him in the proceedings in which the award was sought. (f) Thus full particulars of the work done in respect of instructions for trial must be set out in the bill
> H of costs to enable the registrar to settle the quantum of the charges. (g) The burden was on the party bringing in the bill of costs and claiming to be allowed the amount charged therein to show that the amount was fair and reasonable and ought to be allowed. (h) Failure to consider matters
> I which ought to have been taken into account would mean that the registrar had erred in law and that the court could review the exercise of the discretion.

In this case the SAR had not considered all the matters stipulated in the note to item 26 and the circumstances as described in para 1(2). (i) The amount awarded by the SAR therefore was based on insufficient particulars and amounted to an error of principle, (j) The lack of particulars also precluded the court from amending the registrar's certificate in order to make a lawful determination, (k) Thus the proper order would be to refer the matter back to the registrar to review his taxation for item 26 upon the defendant submitting a fresh bill of costs with particulars.

(g) In *Gooi Hock Seng v. Chuah Guat Khim* [2001] 1 CLJ 583, the issue before the Supreme Court was in respect of taxation, on the question whether registrar's award on quantum can be interfered and whether interest is payable where an order directs payment of costs to be taxed. The court held that:

Bearing in mind the decisions in *Coon v. Diamond Tread Co (1938) Ltd* [1950] A ELR Vol 2385 and *Gorfin v. Odhams Press Ltd* and having considered what was laid down in the *Malaysia Court Practice,* High Court Vol 1, p 3941, the respondent's application for review of the first and third items ought to be dismissed. The phrase "as the circumstances require" in Order 59 r. 36(5), confers on the judge, a discretion which is to be judicially exercised. The registrar's decision should not be interfered with unless there was an error of principal or some other material error and for this purpose, a broad overview of the matter should be taken. The court will not interfere with the decision of the taxing Registrar upon a mere question of quantum if the taxing Registrar has exercised his discretion after consideration of all the circumstances and if no question of principle arises. It is only when the taxing Registrar's decision has been exercised on some wrong principle or the quantum allowed is obviously wrong that the Judge will interfere.

As was laid down by the Federal Court in *Liau Kim Lian v. Bajuria* [1971] 1 LNS 63, interest is payable where an order directs payment of costs to be taxed, and a judgment for damages to be assessed, or for costs to be taxed, carries interest from the entry of judgment and costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation. In the circumstances, interest on costs should have been awarded

A by the Registrar. In the circumstances, the Registrar's certificate should be amended accordingly, to include interest on costs at 8% per annum from the date of judgment of the appeal in the Federal Court dated April 17, 1993 to the date of realization.

B **[9]** On the issue of quantum, it is apparently clear that the applicant had only succeeded on a procedural point and in ordinary circumstance the getting up fees should have been less than RM2,000 as there is no finality and the plaintiff can refile the charge action. The learned deputy registrar in this case has been C very generous with the award, of RM5,000 for the getting up fees.

[10] Taking all factors into account, I take the view that the learned deputy registrar in deciding the quantum had not erred on D questions of principles or had failed to take into account some relevant consideration. The strongest point in this taxation proceedings for the defendant/applicant was his right to seek for interest at 8% per annum for the taxed costs from the date of judgment until the date of realisation with a proviso that the court E may refuse to do so in the event there was delay in taxing the bill of costs. Since the defendant has not sought for interest I will not make an order.

[11] Further, I disagree with the defendant's contention that the F learned deputy registrar ought not have ordered RM500 costs for review by the registrar. The application for taxation or review is an incidental proceedings in an action and the registrar has sufficient powers under O. 59 to award costs of review as he deems fit. On a similar note I take the view that for this G "summons to review taxation by the judge" the court may order costs. It will be preferable in such cases to award a fixed sum of costs as was done by the learned deputy registrar. In this case the plaintiff/respondent should be granted costs as I find that the lengthy arguments put forward by the defendant/applicant on H settled principles of law has taken much of the plaintiff's as well as judicial time.

I

[12] For reasons stated above, it is my judgment the order of the learned deputy registrar must be sustained and the defendant's application for review must be dismissed and further the defendant/applicant must pay the sum of RM3,000 to the plaintiff/respondent as costs for this review made under O. 59 r. 36(1) of RHC 1980. I hereby order so.